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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,007	11/13/2003	Joseph Bruce Tominello		4170

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EXAMINER
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WUJCIAK, ALFRED J

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 08/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/707,007	TOMINELLO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alfred Joseph Wujciak III	3632	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 6/6/06.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 13-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/6/06</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

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### **DETAILED ACTION**

This is the final Office Action for the serial number 10/707,007, Container, filed on 11/13/03.

#### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-12 (figures 7,10-12), drawn to stand, classified in class 248, subclass 166.
- II. Claims 13-17, drawn to blank (figures 1-8), classified in class 270, subclass 39.01.
- III. Claim 18, drawn to carrier (figures 13-15), classified in class 294, subclass 137.

Applicant's election of group I in the reply filed on 10/19/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, lines 4-5, “the main body expands and contracts as the panel of the first component is moved farther from and closer to, respectively, the panel of the second component” and claim 1, lines 3-4 cited “sliding space” clearly show two different embodiments which is indefinite. The applicant can only use one embodiment for one independent claim, not two embodiments in one independent claim. In the argument on pages 6-7, the applicant clearly explained that there are two different embodiments, one embodiment with “sliding space” from figures 1-4 and 7 and second embodiment with “the main body expands and contracts as the panel of the first component is moved farther from and closer to, respectively, the panel of the second component” from figures 9-10. In this office action, the examiner is assuming claim 1 is based on figures 9-12.

Claim 1, line 1, “blank” is indefinite because the applicant is changing the embodiment of claim 1 to figures 1-8 from figures 9-12. Later in the claim 1, line 2 cited “leg or legs” which causes conflict with the “blank” because in the drawings or the specification did not explain that the “blank” comprising or being supported by leg(s). With respect to applicant’s argument/remark filed on 10/17/05 regarding restriction requirement, the applicant states that Claims 1-12 are drawn to stand and claims 13-17 are drawn to blank.

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Claim 1 recites the limitation "the main body" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claims 2-12 are rejected as depending on rejected claim 1.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent # D448,625 S to Moffett, III et al.

Moffett, III et al. teaches a stand (figure 1) comprising a main body having first and second components. The components contain panel and at least one leg. The first and second components include two legs and flanges (handle on the cooler in figures 5-6).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett, III et al. in view of US Patent # 4,068,779 to Canfield.

Moffett, III et al. teaches the main body but fails to teach the main body comprised of polymeric material. Canfield teaches the plastic main body. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified Moffett, III et al.'s main body with plastic as taught by Canfield to reduce weight of the cooler to provide convenience for transporting cooler to a different location.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett, III et al. in view of US Patent # 5,931,019 to White et al.

Moffett, III et al. teaches the first and second components but fails to teach the first and second components having finger holes. White et al. teaches finger holes (19). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added finger holes to Moffett, III et al.'s first and second components as taught by White et al. to provide grip on the components for lifting cooler off the ground.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett, III et al.

Moffett, III et al. teaches the stand having a surface but fails to teach the surface having friction. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added friction to the surface to provide stabilization in the legs while supporting cooler in a vertical position.

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Claims 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett, III et al. in view of US Patent # 6,471,059 to Purvis.

Moffett, III et al. teaches the main body but fails to teach the main body having indicia. Purvis teaches the indicia (figure 1b). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added indicia to Moffett, III et al.'s body as taught by Purvis to improve appearance of the cooler.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett, III et al. in view of US Patent # 3,191,810 to Johnston.

Moffett, III et al. teaches the container but fails to teach the container enclosing a bladder. Johnston teaches the container enclosing a bladder (figure 2). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used bladder in Moffett, III et al.'s container as taught by Johnston to provide convenience for removing liquid in bladder from the container.

In regards to claim 9, Moffett, III et al. in view of Johnston teaches the bladder but fails to teach the bladder contains wine. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have replaced the milk with wine in Moffett, III et al. in view of Johnston's bladder to provide designer's preference of liquid to drink.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett, III et al. in view of Johnston and in further view of US Patent # 3,880,485 to Schmelzer.

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Moffett, III et al. teaches the stand but fails to teach the stand contains beverage receptacles. Schmelzer teaches the beverage receptacles (figure 1). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added beverage receptacles to Moffett, III et al.'s stand as taught by Schmelzer to provide convenience for supporting beverage on the cooler.

### ***Response to Arguments***

Applicant's arguments filed 6/6/06 have been fully considered but they are not persuasive.

Since the applicant is not constant with original the embodiment of claim 1 which causes 112 rejection problem, the prior art rejections under Moffett, III et al., Canfield, White et al., Purvis, Johnston and Schmelzer read on claims 1-12 based on stand embodiment (figures 9-12).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37



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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Joseph Wujciak III whose telephone number is (571) 272-6827. The examiner can normally be reached on 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6815. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alfred Joseph Wujciak III  
Primary Examiner  
Art Unit 3632



8/10/06